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The opposition Jamaica Labour Party (JLP) has voiced bitter criticism of the Jamaican electoral system following its resounding defeats in the December, 1976 parliamentary elections and the March, 1977 local government elections. (In the former, the JLP won only 13 of the 60 seats; in the latter, the ruling People's National Party (PNP) won control of all parishes.) The JLP has stoutly claimed that the PNP, through its control of the electoral machinery, perpetrated a wide variety of irregularities which distorted the results. While the JLP has not asserted that it would have won the elections, it has held that it should have won a significantly larger share of the popular vote (it received 43.2 percent in the parliamentary elections and 32 percent in the parish council polling) and, in the parliamentary elections, would have gained many more seats than it did.

The opposition party has now made available its proposals for electoral reforms (enclosed); they are part of a larger program which JLP leader Eddie Seaga has urged on Prime Minister Manley since last December

Enclosure: As stated

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(see 76 Kingston 5553). In the statement, the JLP has analyzed the present system, underscoring the fact that ^{the} Electoral Office which administers elections is subject to a Minister of Government with the result that independence and objectivity are impossible. The proposal then recites a litany of irregularities observed in the 1976 parliamentary and 1977 parish council elections:

- Voting by unregistered persons
- Voting by persons whose identity as registered voters has not been properly established
- Voting by persons notwithstanding evidence they had already voted elsewhere
- Voting by persons who are not then required to apply indelible ink to their fingers to show they have voted
- Ballot box stuffing, accompanied by additions of names to the poll book
- Denial by Presiding Officers at polling places of the right of designated agents of the opposition party to fulfill their several scrutinizing functions
- Withholding of certificates of vote count by Presiding Officers
- Refusal of "Special District Constables" to act when irregularities cited
- Transfer of ballot boxes from polling places to Returning Centres by political partisans

The JLP has, of course, collected numerous attested statements in support of its allegations.

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The JLP proposal then sets forth a series of inter-related recommendations. They urge:

- Creation of a five-member Electoral Commission to assume all functions of the Electoral Office. Two members of the Commission would be nominated by the Prime Minister, two by the Leader of the Opposition and the fifth -- who would serve as Chairman -- by the four members already chosen. In the event of an impasse, the Chief Justice would name the fifth member.

The Electoral Commission would appoint all Returning Officers, recommend any alterations in electoral constituencies, and hear and investigate charges of irregularities arising out of elections.

- Recasting the process for enumeration of voters to incorporate safeguards.
- Insuring more certain identification of voters.
- Provision for a national identification system with cards bearing photographs.

COMMENT: The JLP proposal displays considerable thought regarding ways to reduce the possibility of election irregularities. Whether or not it proves to be an exercise in futility remains to be seen. Prime Minister Michael Manley announced during the April 22 delivery of his Emergency Production Plan that the issue of electoral reform will be considered during the examination of Jamaica's constitutional structure, a task which -- if actually undertaken -- is unlikely to reach fruition for several years. Since the JLP is so weak legislatively, perhaps its only hope to spur early consideration of its electoral reform will lie with extra-constitutional activity. The JLP talks a lot about passive resistance but its only action in that direction was its boycott of the Governor-General's speech on April 22. The absence of the JLP members was noticeable, but more attention was captured by the absence of notables among the PNP's ranks.

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PROPOSALS

FOR

REFORM OF THE ELECTORAL SYSTEM

1. The Electoral System: Implications for Democracy

The ultimate test of any real democracy lies in the means by which the will of the people is expressed. Elements such as freedom of speech, freedom of association etc. are central to the proper functioning of any such democracy but however much these elements exist, it remains critical to any concept of democracy that the means be provided whereby the collective will of the people can be expressed freely, completely and decisively.

It is not difficult to understand that if the means which exist can be and are, in fact, subverted and manipulated in such a manner as to distort and frustrate the will of the majority, then all the democratic freedoms which may exist become increasingly irrelevant. What is worse is that this manipulation of the means of democratic expression may occur while maintaining all appearances and going through all the motions of a democratic process. The ultimate danger lies in the fact that decisions taken which do not reflect the will of the majority create dissatisfaction among this majority which, as it increases and is prolonged, destroys their faith in the democratic process to the point where they seek other and, inevitably, more destructive means to give effect to that majority.

2. The Electoral System: Structure of Authority

An examination of Jamaica's electoral system must begin with a look at the way in which the electoral authority is structured and the practices which result from that structuring.

The Electoral Office which administers the electoral system is part of the Civil Service establishment and therefore falls under the direct control of a political Minister of Government. It cannot be disputed that this is ill-advised since a Minister of Government

interest in the operation of the Department. The fact that this has existed for decades does not in any way minimize the dangers inherent in such an arrangement.

One immediate consequence of this is that the Electoral Office is made instinctively responsive to "recommendations" or "requests" made by their Minister or, by extension, the party to which he belongs, and as a corollary equally unresponsive to even genuine protests and complaints made by the Opposition Party or any of its members.

3. Returning Officers

Electoral functions are supervised by a Returning Officer appointed for each Constituency. These Returning Officers are appointed by the Chief Electoral Officer on the instructions (unofficial though they may be) of the Minister in charge of electoral matters. In almost every instance, the appointees are hand picked supporters of the party in power who are invariably recommended by the party's candidate in the respective constituencies. This act, by itself, lays the foundation for political domination of the electoral machinery since apart from being fervent party supporters, they will never be unaware of the source from which their appointments originated.

Many Returning Officers demonstrate open hostility towards representatives of the party in opposition. This is often reflected in the failure to provide opposition representatives with required information, ignoring complaints or appeals which they may make, and generally displaying a lack of cooperation towards them. More important is the fact that decisions which are critical to the operation of the electoral system are taken by the Returning Officer and are invariably determined by partisan political considerations.

4. Enumeration Exercise and Preparation of Voters Lists

The Law requires that each voter be registered at his place of residence. This is done by a team of enumerators, who are required to visit each household to carry out the process of registration. The enumerators are traditionally accompanied by a Scrutineer from each of the two major political parties to ensure that an impartial and accurate enumeration is carried out. However, the law does not require that enumerators be accompanied by Scrutineers. Once the enumerator has completed his work, the names of those persons registered along with the supporting documents are submitted to the Returning Officer who certifies them and forwards them to the Electoral Office for the official voters list to be compiled.

It is in this area of enumeration and preparation of voters lists that many atrocities are committed.

5. Appointment of Enumerators

The selection of enumerators is almost entirely restricted to known political activists of the governing party. Invariably the type of persons appointed suggests that the selection was carried out by candidates of whichever party is in power or at least in consultation with them. The effect of this is to place the compilation of the voters list largely in the hands of the supporters of the governing party. It is not unnatural, therefore, that the vast majority of them dishonestly seek to further the cause of their party by padding the list with the bogus names or names of persons not qualified to vote while at the same time excluding from the lists genuine, qualified persons who do not support their party. The objective here is obvious: to rig the lists in such a way as to enhance the chances of their party at the polls.

The following is a list of the common malpractices occurring at the enumerator level:-

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- (a) Enumerators refuse to make appointments with opposition Scrutineers and proceed to work without them; thereby enabling them to carry out various forms of rascality without anyone being present to raise any objections. Since the law does not require the presence of Scrutineers there is no legal means of redress.
 - (b) Enumerators wilfully fail to visit households whose members are known to be supporters of the opposition party resulting in their names being excluded from the voters list and not being allowed to vote on election day.
 - (c) Enumerators deliberately register persons who are not qualified to vote because they are underage, do not reside in the area or have already been registered elsewhere.
 - (d) Enumerators register fictitious names which, once they appear on the list, make it possible for persons to be assigned on election day to vote in these fictitious names.
 - (e) Enumerators refuse even where opposition Scrutineers are present, to allow them to fill out notices of objection in cases where they wish to challenge a particular registrant.
 - (f) Enumerators refuse to allow opposition Scrutineers to inspect electoral documents.

All these irregularities have become commonplace in the enumeration exercise. Appeals to Returning Officers have become futile since, in reality, one is appealing "from Caesar to Caesar" with no hope of redress. The result is that voters lists, when published, are the product of careful manipulation designed to ensure that the governing party enjoys an unfair advantage among those persons legally entitled to vote.

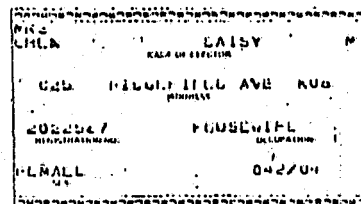
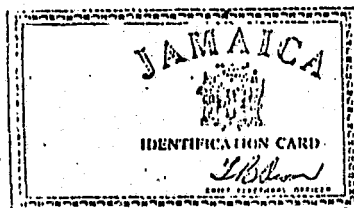
6. Delivery of Identification Cards

The law requires that each registered voter be issued with an I.D. card. The delivery of these I.D. cards takes place several months after the voter has been registered and provides further opportunity for massive irregularities. As in the case of the enumerators, the persons selected to distribute I.D. cards are known political activists of the governing party but unlike the enumeration, Scrutineers are not permitted to accompany them. Indeed, Returning Officers are not even required to inform candidates or party representatives of the persons selected to distribute I.D. cards and the areas to which they are assigned. The effects of this arrangement are as follows:-

- (a) I.D. cards belonging to known opposition supporters are withheld so that they may have difficulty in voting on election day and where they are unable to otherwise establish their identity they may in fact be prevented from voting.
- (b) I.D. cards belonging to known opposition supporters are in some cases handed to select persons who on presentation of the cards are allowed to vote in that name on election day whether that person has already voted or subsequently turns up to vote. It must be remembered that I.D. cards no longer carry photographs as a means of identification.
- (c) I.D. cards issued for those fictitious names which were illegally placed on the lists during the enumeration are likewise handed to select persons who are allowed to vote in these names on election day.

It must be remembered that under the existing system, an I.D. card bears no photograph. It simply states the name of the voter, address and registration number, occupation, sex and the polling

division where registered. Indeed it cannot be properly referred to as an identification card since it does not serve as a means of identification. In other words, under the present system it is not what is contained in the I.D. card which identified a voter, but rather the mere possession of the card which leaves the way open for impersonations and bogus voting. Below is a photocopy of a typical Identification Card.



Conduct of Elections

The conduct of elections is merely an extension of the methods used in the enumeration and preparation of voters lists.

Again, political activists of the governing party are selected as presiding officers and poll clerks to conduct voting at polling stations. They often prove to be willing and cooperative towards various types of irregularities carried out on election day in favour of their party. The more common of these are enumerated below:-

- (a) Persons being allowed to vote although their names do not appear on the voters lists.
- (b) Persons being allowed to vote without properly establishing their identity.
- (c) Persons being allowed to vote despite evidence (e.g. ink stains on their fingers) that they have already voted elsewhere or being allowed to vote without dipping their fingers in the ink so that they can subsequently attempt to vote elsewhere.

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(d) Extraneous ballot papers being placed or allowed to be placed in the box, and the attempt to conceal this dishonesty by adding an equivalent number of names in the poll book.

(e) Presiding Officers refusing to allow opposition agents to perform their duties such as:-

- (i) inspecting ballot box
- (ii) counting ballot papers
- (iii) checking master registration cards
- (iv) checking serial numbers of ballot papers, when issued and again when being placed in the box
- (v) having objections and observations recorded in poll book
- (vi) making periodic checks of persons listed in poll book as having voted
- (vii) inspecting questionable ballots during count
- (viii) placing their seal on the ballot box

(f) Presiding Officers refusing to issue certificates of count after the votes have been counted.

In addition to the partisan selection of Presiding Officers and Poll Clerks, special district constables assigned to do duty at each Polling Station are invariably hand picked political supporters who invariably refuse to take any action in instances where irregularities are being carried out.

To complete the selection of political personnel, political activists are usually assigned to collect ballot boxes and transport them to the Returning centres. Here again no party agents are required or, in many instances, allowed to accompany them. On numerous occasions, boxes have disappeared or have been opened and ballots tampered with or exchanged.

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R E C O M M E N D A T I O N S

Structure of Authority

In principle, the electoral system should be removed from political influence, direction and control. From experience, it is imperative that this be done if integrity is to be restored to the system.

Proposals as to how the electoral authority ought to be structured are set out as follows:-

- (a) The subject of "Electoral Matters" should be removed from Ministerial portfolio and the present Electoral Office be abolished as part of the Civil Service.
- (b) A Permanent Electoral Commission should be established to be responsible for all matters relating to:
 - (i) the enumeration and registration of voters
 - (ii) the compilation and publication of voters lists
 - (iii) the establishment and review of electoral boundaries
 - (iv) the conduct of elections.
- (c) The Electoral Commission should comprise five persons, appointed by the Governor General, two of whom are nominated by the Prime Minister and two nominated by the Leader of the Opposition. The fifth member (and Chairman) should be recommended by the other four members in agreement but if, within 21 days of their appointment they fail to reach agreement, the Chief Justice should be required to nominate the fifth member (and Chairman) for appointment by the Governor General.
- (d) The Electoral Commission should determine the appointment of all Returning Officers with provision for objections to be made and considered against any such appointment. The Commission should also lay down rules for the performance of their duties not otherwise provided for in law.

- (e) The Electoral Commission should serve as an appeal Board to hear and consider objections to any appointments or decisions made by the Returning Officer.
- (f) The Electoral Commission should act as an investigatory agency to enquire into complaints and allegations regarding any matter falling under its purview.
- (g) The Electoral Commission should be responsible for reviewing electoral boundaries and determining what changes are to be made.
- (h) The Electoral Commission should be empowered to hear and investigate complaints of malpractices arising out of elections. At present, only judicial hearings by way of election petitions are possible and not only do these constitute a long and tedious process but they are only applicable to certain types of irregularities and must be based on a premise that the irregularities were sufficient to cause and did in fact cause the wrong candidate to be returned.

The appointment of Returning Officers by an independent Electoral Commission would go a far way in ensuring that impartial persons of integrity are appointed. The provision for objections to be made to the Electoral Commission against appointments made by Returning Officers would also minimize the possibility of dishonest political activists being selected as enumerators, Presiding Officers, Poll Clerks etc.

Once the appointment of officials is removed from political control, many of the malpractices now being perpetrated would be removed since the element of wilful intent would have been minimized. Such irregularities as may still exist would relate largely to levels of competence or individual rascality for which the avenue of appeal to the Electoral Commission and their capacity to conduct investigations would provide appropriate remedy.

Proposals for Functioning of Electoral Machinery

(a) Enumeration and Preparation of Voters Lists

- (i) Returning Officers should submit to party representative at least 21 days before the commencement of enumeration a list of enumerators so that objections may be made and considered where necessary.
- (ii) Enumerators should be required by Law to issue at least 24 hours in advance notices of appointment to Scrutineers for each occasion on which house-to-house enumeration is to be conducted. Such notices should either be acknowledged by the signature of the Scrutineer or be witnessed by two other signatories as proof of service.
- (iii) Enumerators should be required to prepare daily records of all persons enumerated. These should be signed by the enumerator and Scrutineers and a copy issued to each Scrutineer.
- (iv) All certificates of enumeration issued should be signed by both Scrutineers in addition to the Enumerator. Where a Scrutineer is absent, this should be noted on the certificate.
- (v) Any enumerator found guilty of enumerating persons clandestinely or without prior notification to Scrutineers should be forthwith dismissed and should further be punishable under Law.
- (vi) Scrutineers should be permitted by Law to inspect enumeration documents whenever they so request.
- (vii) Each Scrutineer should be supplied with objection book.

to enable him to record objections when so desired against persons enumerated or against the enumerators refusal to enumerate particular persons.

- (viii) All enumeration documents must be open for inspection by the official party representatives in each constituency

Delivery of I.D. Cards

The delivery of I.D. cards should be conducted along the same lines as enumeration, i.e. on a house-to-house basis by enumerators and Scrutineers and subject to the rules and practices recommended above for enumeration.

Conduct of Elections

Returning Officers should submit to party representatives within 7 days after nomination day (so that objections may be made and considered where necessary):-

- (a) List of Presiding Officers and Poll Clerks
- (b) Location of Polling Stations
- (c) Breakdown of lists where Polling Stations are to be divided
- (d) List of persons assigned to transport ballot boxes.

The Electoral System - Proposals for Reform

Identification

A major weakness in the present electoral system is the lack of a proper means of identification as required by Law. The result of this is that persons can be registered and be allowed to vote at different places and in different names and are even able to vote in names in which they have not been registered at all.

A national identification system should be established whereby all persons 17 years and over should be registered and assigned a national registration number. Fixed and mobile registration

centres could be established at appropriate locations throughout the island to which all persons over 17 years may apply for registration. Proof of identification (e.g. Birth certificates, passports, school records or a declaration signed by a local JP) should be required, before registration is granted. The process of registration should require that the following information be recorded:-

- (i) Full name
- (ii) Date of birth
- (iii) Marital status and maiden name where applicable
- (iv) Place of birth
- (v) Names of parents
- (vi) Place of birth of parents
- (vii) Height
- (viii) Complexion, marks of identification etc.

Each registrant should be thumbprinted, photographed and required to sign where possible and should be issued with a receipt in acknowledgement of his application. The information should then be forwarded to a central plant where it is processed. Computer technology exists and is in use in various parts of the world whereby identification data can be classified and instantaneously checked for duplications in thumbprints, names, date of birth etc. Once the identity of an applicant is verified, a master identification card could be prepared containing the following:-

- (i) Name
- (ii) Date of birth
- (iii) Place of birth
- (iv) Height
- (v) Complexion, marks of identification etc.
- (vi) Photograph
- (vii) Thumbprint
- (viii) Signature

From this a simple I.D. card could be produced bearing the following:

- (i) Name
- (ii) Photograph
- (iii) Occupation
- (iv) Registration number
- (v) Nationality

This I.D. card would then be delivered on a house-to-house basis to the registrant on presentation of the receipt and in accordance with the provisions previously mentioned. The national registration system should be placed under the control of the Permanent Electoral Commission to ensure that the impartiality inherent in its establishment is brought to bear on the registration system. A period of 6 months could be set aside for a national registration drive during which a campaign to have all eligible persons registered could be conducted. This would involve the use of mass media and the involvement of community organisations. Since, as will shortly be proposed, registration would become a requirement of enumeration political parties which are effective agencies for mobilizing people could be involved in ensuring maximum registration. Once the initial registration drive is completed, the fixed and mobile registration centres would remain in operation on a continuous though less intensive, basis to process newly qualified persons.

6. Enumeration Period

House-to-house enumeration should be conducted annually and should be confined to a minimum period (say 6 weeks) to ensure a minimum level of movement of people doing house-to-house enumeration. To facilitate this enumerators should be required to work at least 5 days per week during this period.

7. Eligibility for Enumeration

In addition to the requirements of age, nationality, residence etc.

persons should be required to produce their national identification cards before being allowed to be enumerated. The national registration number would then be the number appearing on the voters list.

8. Continuous Registration

Provision must be maintained for persons who qualify after the house-to-house exercise has been completed, or were not in possession of a national identification card or who otherwise failed to be enumerated at that time, to have themselves enumerated. It is proposed that post offices and fixed registration centres continue to be used to receive applications from persons who wish to be enumerated. These applications would be forwarded to the Returning Officers at the end of each month who would in turn dispatch them to enumerators for them to carry out the enumeration in the normal manner.

9. Supplementary Lists

(a) Monthly supplementary lists containing the names of these persons registered during each preceding month should be published by the Electoral Commission.

(b) One of the critical problems with the existing machinery is the late publication of supplementary lists. In many instances, these lists are not delivered until election day thereby allowing no time for them to be checked and verified by candidates or political parties. A stipulation should be made in the Law that no supplementary lists can be used in any election if published less than 30 days before nomination day. This would eliminate the problem of late additions to the voters list.

10. Conduct of Polling

(a) Voters should be required to produce their I.D. cards which

could be checked against their master registration cards to ensure proper identity. In the case of voters who failed to produce their identification cards, their identity could be verified by questioning them and checking their replies against the master registration card, a copy of which should be available in the Polling Station.

- (b) Ballot papers should carry the number of the constituency as well as the number of the polling division to which they are assigned in addition to the serial number. This would minimize the possibility of extraneous ballots being placed in the box.
- (c) A certificate signed by the Returning Officer should be delivered to each Indoor Agent before polling commences setting out the serial number sequence and total amount of ballot papers issued to the respective polling stations. Indoor Agents should still be allowed to examine and count the ballot papers to satisfy themselves that the correct ballot papers have been issued.
- (d) Presiding Officers should be required by Law to check the master registration card before allowing each person to vote.
- (e) Each ballot paper, when being issued, should be stamped at an appropriate place with an official stamp and accredited indoor agents for each candidate should be allowed to initial each ballot paper as is now the case in respect of Presiding Officers.
- (f) Counterfoils which are detached before ballots are placed in the box should be retained as a means of double-checking ballot papers issued instead of being instantly destroyed as is the present practice.
- (g) Indoor Agents should be permitted to record such objections as

they wish to make on a prescribed form, a copy of which should become part of the official records of the polling station.

- (h) Presiding Officers should be required by Law to issue certificates of preliminary count to each agent.
- (i) Candidates should be allowed to appoint an agent to travel in each vehicle assigned to collect and transport ballot boxes after the preliminary count.
- (j) An official seal should be placed on each box on which Indoor Agents should be permitted to affix their signatures. The seal should be made of such material which cannot be removed without being mutilated.

11. The Fixing of Constituency Boundaries

At present, constituency boundaries are determined by Parliament on the recommendation of a Standing Committee comprising three members from each side with the Speaker as Chairman. The fact that the Speaker is a member of the party in power in effect gives it a majority of the members and therefore the power to fix boundaries in a manner determined by itself. It is not unnatural therefore that parties in power have historically used their authority to rig constituency boundaries in such a way as to give themselves a fair advantage at the Polls. This is merely another area where the electoral process can be and has been frustrated by manipulation. Any proposal to restore integrity to the electoral process must address itself to this area of abuse.

It is proposed, therefore, that the review and fixing of constituency boundaries be removed from political control by placing it in the hands of the Electoral Commission. The present stipulation which prevents boundaries from being changed within four years should be maintained to ensure a basic measure of stability. It should be required that proposed changes in constituency boundaries be gazetted at least three months before coming into Law to all.

public discussion and recommendations in the form of memoranda.

12. Local Government Elections

- (a) At present, the electoral system lacks uniformity in that electoral boundaries for local government elections are determined not by Parliament but by a gazetted notice issued by the Minister of Local Government. This arrangement allows for the same type of manipulation and gerrymandering, but in this case the process is not even subject to parliamentary debate. Indeed there is no requirement for even consultation with the Opposition. It is proposed therefore that Local Government boundaries be also placed under the control of the Electoral Commission.
- (b) The present arrangement which allows for the fixing of Parliamentary or Local Government boundaries independently of the other is unsatisfactory as it often results in local government boundaries overlapping two or more constituencies. It is further proposed therefore that revision of local government boundaries be incorporated with the revision of parliamentary boundaries and be subjected to the same stipulations, namely that boundaries cannot be changed within four years and that proposed changes be gazetted for at least three months before coming into Law.

13. Penalties for Electoral Crimes

It is felt that the existing penalties under Law for dishonest conduct in the electoral machinery are not commensurate with the fundamental damage done to the nation by perpetration of such acts. It is also recognised that some of the atrocities committed against the electoral system fall outside of the purview of the Electoral Office. Crimes such as the armed hold-up of polling stations, the theft of ballot boxes and electoral documents, physical attacks on electoral officials etc. cannot be fully dealt with by internal

reform of the electoral system.

It is therefore proposed that more severe penalties be imposed for electoral offences and that general crimes (such as attacks on Scrutineers, hold-up of polling stations etc.) be made specific electoral offences.

14. Consideration and Implementation of Reform Proposals

It is recognised that important elements of these proposals require constitutional amendment. However, the critical urgency of the need for electoral reform demands that consideration of and effective action on this matter not be allowed to await a general review of the constitution, an exercise which has made virtually no progress since it was announced by the Government in 1975.

It is therefore recommended that an impartial Commission of Enquiry be set up immediately to examine the present electoral system, to consider these and such other proposals as may be made and to make appropriate recommendations for electoral reform.